

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Natasha Graham

Complainant

V.

Roddy and Natasha Williams

Respondents

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Case No. 32503

Rental Facility: 13121 Wonderland Way, Apt. 3, Germantown, MD 20874 (License # 18333)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 31st day of August, 2011, found, determined, and ordered, as follows:

BACKGROUND

On May 4, 2011, Natasha Graham ("Complainant"), former tenant at 13121 Wonderland Way, Apt. 3, Germantown, MD ("Condominium"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which she alleged that her former landlords, Roddy and Natasha Williams, owners of the Condominium ("Respondents"): (1) failed to refund any portion of her security deposit (\$1,456.00) plus accrued interest (\$109.20) after the termination of her tenancy, for a total amount of \$1,565.20, in violation of Section 8-203 (e) (1) of the Real Property Article, Annotated Code of Maryland (1954, 2003 Repl. Vol., 2007 Suppl.), ("Real Property Article"); and, (2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair that damage, within the 45 days after the termination of her tenancy, in violation of § 8-203 (g)(1) of the Real Property Article.

The Complainant asserts that: (1) she did not damage the Condominium in excess of ordinary wear and tear during her tenancy; (2) the Respondents are charging her for the repair of defective conditions which existed at the beginning of the tenancy; and, (3) the Respondents had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondents contend that the Complainant damaged the Condominium in excess of ordinary wear and tear during her tenancy, and the costs they incurred to repair the damages exceeded the amount of the security deposit the Complainant paid.

The Complainant is seeking an Order from the Commission for the Respondents to refund the entire security deposit plus accrued interest, in the amount of \$1,565.20, and a penalty of up to three times that amount based on the Respondents' unreasonable withholding of her security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on July 12, 2011, the Commission voted to hold a public hearing on August 23, 2011. The public hearing in the matter of Natasha Graham v. Roddy and Natasha Williams, relative to Case No. 32503, was held on August 23, 2011.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Natasha Graham, the Respondent, Roddy Williams; and, Tara Whicker, HOC Compliance Inspector, witness for the Commission.

Without objection, the Commission entered into the record the following exhibits: (1) the case file compiled by the Department, identified as Commission's Exhibit No. 1; and, (2) packet of information regarding an informal hearing performed by the Housing Opportunities Commission offered by the Commission's witness, identified as Commission Exhibit No. 2. The Commission also entered into evidence, without objection, the following exhibits offered by the Respondents: (1) a packet which included a summary of damages done at the Condominium, rent ledger, receipts and cancelled checks for payments to contractors, identified as Respondents' Exhibit No.1; and, (2) copy of a phone log for the period January 10, 2011, through February 9, 2011, identified as Respondents' Exhibit 2. The Commission also entered into evidence, without objection the following exhibits offered by the Complainant: (1) receipt from Stanley Steemer dated January 17, 2011, relative to the cleaning of the carpet at the Condominium, identified as Complainant's Exhibit No. 1; and, (2) copy of an official form from the US Postal Office requesting a forwarding/change of address, identified as Complainant's Exhibit No. 2.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On February 10, 2008, the Complainant and the Respondent Roddy Williams signed a one year lease agreement ("Lease") for the rental of the Condominium, which commenced on April 11, 2008, and expired on April 30, 2009, for a monthly rent of \$1,456.00.

2. On or about February 10, 2008, the Complainant paid the Respondent a security deposit, in the amount of \$1,456.00; which amount is receipted in the Lease.

3. At the expiration of the lease term, the Complainant remained in the Condominium as tenant on a month to month basis until her vacate date.

4. The Commission finds that the Complainant was a Housing Choice Voucher holder throughout her entire tenancy. Complainant's rent responsibility was \$50.00 a month.

5. The Commission finds that on November 18, 2010, the Complainant submitted to HOC a Notice of Intent to Vacate the Condominium by December 1, 2010.

6. The Commission finds that on or about January 14, 2011, the Complainant vacated the Condominium, with HOC having paid their rent portion through the entire month of January 2011.

7. The Commission finds that on January 14, 2011, the Complainant signed a one year lease with a different landlord at her new residence, which started on January 15, 2011, and is due to expire on January 15, 2012.

8. The Commission finds credible the Complainant's testimony that she mailed the keys to the Respondents on January 28, 2011.

9. The Commission finds that by correspondence dated February 10, 2011, within 45 days of the termination of the Complainant's tenancy, the Respondents advised the Complainant of the following:

"...I have received an envelope from you dated 1/28/11 with the keys from the Condo and the mail box key. While I have not received a formal notice of your intent to vacate the premises, I have been by the unit and see that most of your belongings have been moved. Since I have been unable to contact you, I have done a walkthrough inspection of the unit and have found several items that will need to be repaired, cleaned or replaced.

The items that need to be addressed are:

1. Carpet/floor damage due to unauthorized pet (\$1,900.00)
2. Damaged kitchen cabinets (\$500.00)
3. Cracked tile in the kitchen (\$200.00)
4. Marked walls in the family room and bedrooms (\$150.00)
5. Cleaning of the condo (bathrooms, refrigerator, oven, bedrooms). Please note that there are beer bottles and trash in the dishwasher that need to be removed (\$100.00)
6. Change the locks that you installed without authorization (\$50.00)

The cost of repair will be approximately \$2,900.00 which exceeds your security deposit and accrued interest. In addition, there are unpaid rents and late fees totaling \$1,463.40 for the period 1/20/10-1/20/11. If I do not hear from you within (10) calendar days, I will be using the security deposit to address the issues stated above. Please contact me at your earliest convenience so that we can discuss. I can be reached at (240) 350-5392..."

10. The Commission finds credible the testimony of Roddy Williams that he mailed the February 10, 2011, letter to the Complainant's last known address.

11. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,456.00 security deposit from the commencement of her tenancy February 10, 2008, until the termination of her tenancy, January 15, 2011.

12. The Commission finds credible the Complainant's testimony that there was damage in excess of ordinary wear and tear to the walls and the carpet, at the time she vacated the Condominium.

13. The Commission finds credible the Respondent's testimony that there was evidence of damage at the Condominium when the Complainant vacated. Furthermore, the Respondent provided sufficient evidence/documentation that the following damages claimed against the Complainant's security deposit were in excess of ordinary wear and tear:

- (A) Carpet ripped in the hallway;
- (B) General cleaning, patching and painting of the walls;
- (C) Damaged drawer base cabinets.

In addition, the Commission finds it credible that the Complainant vacated the Condominium with unpaid rent.

14. The Commission finds credible the Complainant's testimony that sometime in October 2010, she paid the Respondent \$200.00 cash towards her rent in arrears.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Paragraph 22 of the Lease states in pertinent part: "...Termination-hold over – (a) In the case of a periodic tenancy, where the lease does not contain a stated term (e.g., for one year) either Landlord/Agent or Tenant may terminate this Lease at the expiration of said Lease or any extension thereof by giving the other two (2) months' written notice of termination..." The Commission concludes that the Complainant did not provide the Respondents with an adequate Notice to Vacate. Therefore the Complainant vacated the Condominium in violation of her signed lease.

2. Section 8-203 (h)(1) and (2) (i) of the Real Property Article states: "The provisions of subsections (e) (1) and (4) and (g) (1) and (2) of this section are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy. (2) (i) A tenant specified in paragraph (1) of this subsection may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of

being evicted or ejected or of abandoning the premises.” The Commission concludes that the Respondents sent to the Complainant the list of itemized damages within the 45 days after her tenancy ended, even though they were not required by law to do so.

3. Pursuant to Section 8-203 (g) (1) of the Real Property Article, the Respondents were within their rights to withhold from the Complainant’s security deposit the cost actually incurred to repair damages to the Condominium in excess of normal wear and tear after the termination of her tenancy, which amount was \$2,623.24 as follows:

- A) \$600.00 for cleaning, patching and painting on the walls throughout the Condominium;
- B) \$392.04 for replacement of the damaged carpet calculated as follows: average life of a carpet in a rental property is 5 years (60 months). $\$1,960.00$ (cost of new carpet)/60 months = $\$32.67$ (monthly cost) x 12 months (remaining life of carpet in months) = $\$392.04$;
- C) $\$1,294.20$ for kitchen cabinets replacement calculated as follows: average life of cabinets is 20 years. $\$2,157.00$ (cost of new cabinets)/20 years = $\$107.85$ (yearly cost) x 12 years (remaining life of cabinets in years) = $\$1,294.20$;
- D) $\$337.00$ for unpaid rent ($\$537.00$ minus $\$200.00$ cash payment).

4. Section 8-203 (e) (1) and (2) of the Real Property Article states: “(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld, (2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.” The Commission concludes that the Respondents failed to credit the Complainant’s security deposit with simple interest as required by the Real Property Article. The correct amount of simple interest is calculated as follows: $\$1,456.00 \times 7.5\% = \109.20 (duration of security deposit was 2 years and 11 months).

5. The Commission concludes that the Complainant did owe rent and did damage the Condominium in excess of ordinary wear and tear and the Respondents did incur actual costs in the amount of \$2,623.24, which exceeded the Complainant’s security deposit (\$1,456.00) plus accrued interest (\$109.20). Therefore, the Complainant has caused a defective tenancy and the Respondents are entitled to retain the entire security deposit plus accrued interest.

ORDER

In view of the foregoing, the Commission concludes that the Respondents properly assessed \$2,623.24 against the Complainant for damages to the Condominium in excess of ordinary wear and tear and that the Respondents were within their rights to retain the Complainant’s entire security deposit plus accrued interest in the total amount of \$1,565.20. Therefore, Case No. 31503, Natasha Graham v. Roddy and Natasha Williams is hereby DISMISSED.

Commissioner David Peller, Commissioner Laura Murray, and Commissioner Denise Hawkins, Panel Chairperson, unanimously concurred in the foregoing decision.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals.



Denise F. Hawkins, Panel Chairperson
Commission on Landlord-Tenant Affairs